



Deep Core Data

I am writing today to reiterate the position of myself and my firm in regards to the Restoring Internet Freedom proceedings of the Federal Communications Commission. In the two years since we last addressed this issue (FCC-15-24), there has been no meaningful change to the technology or the marketplace that justifies a reversion to Title I status for data carriers. Indeed, the arguments in favor of Title II status have only grown.

Internet access is an increasingly essential commodity in modern America. It is comparable to the postal service, electrical power, or clean water; a citizen without access is incalculably disadvantaged by comparison to those with access. If we accept the premise that any citizen can or should contribute the economy of the nation, we should be doing our level best to ensure that any citizen has the means to connect to our national information network. In fact, several interactions with the Federal Government can now only be made with internet access. Form 5500-series and Form 8955-SSA, just to name a few, have mandatory electronic filing requirements now.

Any arguments that stipulate allowing blocking, throttling, or paid prioritization will in some way increase innovation, as Commissioner O'Rielly suggested as recently as three days ago during a speech in North Carolina, are absolutely mystifying in their logic. I can appreciate the free-market arguments that Mr. O'Rielly and his peers at ALEC use as the bedrock assumptions of their positions, but to suggest that pure free-market principles are applicable to what has become an essential utility is nonsensical.

Proponents of this kind of innovation suggest that allowing differentiated services is no more aggressive than allowing the Postal Service to start offering overnight shipments in addition to first-class mail. On the surface, that seems strictly beneficial; consumers can pay a higher rate for faster service, and first-class mail service isn't impacted.

How will this new overnight service be implemented, though? Is new capital purchased, new infrastructure installed, new personnel hired to develop this new product, or are capital and personnel transferred from first-class mail to this new overnight service? Surely any shareholder, upon seeing the demand for a higher-margin overnight service would like to see as much capital as possible transferred to the new product, and if first-class services need to slip a bit, well, those people had the opportunity to pay for the new, faster service.

It's subtle, it's insidious, and service for the masses degrades. No actor is particularly at fault here; it is simply more profitable to service wealthier clients. We see this in every market from cuisine to yacht building. It is for just this reason that we have regulation in first place.

With the Restoring Internet Freedom proceedings, though, the FCC propose to go a step further. After all, the United States Postal Service is bound by a universal service obligation, a requirement no technology company in the industry is bound by. Imagine a USPS not bound by that obligation.

Banks, for instance, rely on the post office. Imagine if a new, upstart bank started in our city. Its larger competitors, seeing that it could potentially become a threat, propose to cut it out. They pay off the post office to always process their mail first. They know the city's post office can only handle perhaps 100,000 letters per day. They're not asking for the post office to stop serving their competitor, just to serve them better. They're willing to pay handsomely for privilege. And they always make sure they have 100,000 letters that need to go out each day. Statements, advertisements, policy change notifications – they add up fast. And somehow, that new bank's mail gets delayed, or lost, or delivered long overdue. The new, innovative bank develops a reputation for being slow, clunky, and having poor customer service, and folds within the year.

Make no mistake; this is a barely hypothetical situation, and one that is much more likely to happen with information technology than it ever would be with physical mail. The ability to pay for preferential service, and then simply load up the existing infrastructure with priority traffic to reduce the performance of rival companies is a simple process. Paying for priority rewards not the company with the best product or best service, but the company with the most capital to spend on choking the existing lines with high-priority traffic so that lower-priority traffic is delayed or dropped entirely.

Eliminating 15-24's "bright lines" would be a virtual blank check for ISPs to pick and choose winners in any marketspace with specific benchmarks it needs to hit. Buffering internet video is the posterchild for this kind of issue, but the variety of markets vulnerable to this kind of manipulation are manifold. Video games, a multi-billion dollar industry, frequently can be decided by only a few dozen milliseconds of delay during play. Backup systems that keep your data safe can be slowed down so much that they can't finish copying your data.

While major players like Google, Apple, Microsoft, and their ilk could likely afford higher-priced prioritization, any lesser-capitalized players entering the market would be at a major disadvantage through no fault of their own. That's not free-market competition. That's a bully holding a kid's face underwater.

Rolling back Title II would not be the end of the Internet industry in the United States. It would, however, be embracing the current basket of providers as our chosen few; imbuing them with the choice of what new players would be allowed to enter the technology market, and at what price. We are not choosing between more regulation or less regulation. We are choosing whether we want the government to regulate the telecommunications industry, or if we want the telecommunications industry to regulate the economy.

I would prefer the former.

Thank you for your time and attention. Please retain the regulatory principles laid out by the FCC in FCC-15-24.

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